

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 858 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements ? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

-----

INDON HEALTHCARE LTD.

Versus

UNION OF INDIA

-----

Appearance:

M/S TRIVEDI & GUPTA for Petitioners

MR JD AJMERA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

UNSERVED-REFUSED (N) for Respondent No. 4

-----

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

Date of decision: 18/03/98

ORAL JUDGEMENT

(Per : Balakrishnan,J.) :-

The first petitioner is a Company incorporated under the Companies Act and is engaged in the activities of manufacture and sale of various medicaments and life saving drugs and medicines. The petitioners challenge legality and validity of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996, inasmuch as the said Rules are arbitrary, discriminatory and violative of the provisions of the Constitution. The said Rules seek to allow the exemption benefit of the Notification from payment of basic customs duty in favour of those importers of raw materials, who manufacture final goods therefrom in their own factories while discarding those importers who get final goods manufactured by using somebody-else's factory as loan licensees. In the Special Civil Application, the petitioners seek a writ of declaration or any other appropriate writ or direction holding and declaring that the provisions of Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 are ultra vires the provisions of the Central Excise Act, 1944 to the extent to which the Rules seek to exclude loan licensees-manufacturers from the purview thereof.

2. Subsequent to filing of the Special Civil Application, a clarification has been issued by the Government of India, Ministry of Finance, Department of Revenue, Tax Research Unit, New Delhi, by which it has been clarified that a loan licensee is also a 'manufacturer' within the meaning of the Central Excise Act and the Rules, and the factory to be registered under rule 3(1) of Notification no.36/96-Cus.(NT) is only the factory in which the manufacturer intends to manufacture the finished products and not 'his own factory'.

3. In view of the aforesaid clarification issued by the Ministry of Finance, we do not think it necessary to go into the questions raised in the Special Civil Application. This Special Civil Application is disposed of accordingly. Rule is discharged. No order as to costs.

\*\*\*\*\*

patel